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11 **SAMSUNG ELECTRONICS AMERICA, INC.**

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 RAFFI KELECHIAN, individually, and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 SAMSUNG ELECTRONICS
19 AMERICA, INC., a New York
corporation; and DOES 1 through 100,
inclusive,

20 Defendants.

21 CASE NO.: 2:22-cv-08056

22 **NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. SECTIONS
1332, 1446, 1453, AND 1711**

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA:**

3 **PLEASE TAKE NOTICE** that Defendant Samsung Electronics America, Inc.
4 (“Samsung” or “Defendant”), hereby removes the state court action described below
5 to the Court pursuant to 28 U.S.C. §§ 1332(d), 1446, 1453, and the Class Action
6 Fairness Act of 2005, 28 U.S.C. § 1711, *et seq.* (“CAFA”). In support thereof,
7 Samsung states as follows:

8 **I.**

9 **INTRODUCTION**

10 1. On September 16, 2022, Plaintiff Raffi Kelechian (“Kelechian” or
11 “Plaintiff”) filed this lawsuit in the Superior Court of the State of California for the
12 County of Los Angeles, styled as *Raffi Kelechian v. Samsung Electronics America,*
13 *Inc.*, Case No. 22-STCV-30284 (the “State Action”). On October 18, 2022, Plaintiff
14 filed his First Amended Complaint (“FAC”) in the State Action. Plaintiff served
15 Samsung a copy of the FAC on October 20, 2022 by certified mail. The FAC asserts
16 six claims for: (1) negligence; (2) negligence *per se*; (3) breach of implied contract;
17 (4) breach of confidence; (5) unfair business practices; and (6) violation of the
18 California Consumer Privacy Act, Cal. Civ. Code § 1798.150 *et seq.* (“CCPA”). Each
19 of Plaintiff’s claims arises out of a data security incident that Samsung announced on
20 September 2, 2022 (the “Security Incident”).

21 2. On behalf of himself and the putative class, Plaintiff seeks, among other
22 things, compensatory damages, statutory damages, injunctive relief, and attorneys’
23 fees. FAC at 26–28.

24 3. As shown below, the State Action is removable to this Court because all
25 procedural requirements for removal are satisfied, and this Court has subject matter
26 jurisdiction pursuant to 28 U.S.C. § 1332(d).

II.

**SAMSUNG HAS SATISFIED THE
PROCEDURAL REQUIREMENTS FOR REMOVAL**

4. Pursuant to 28 U.S.C. § 1446(b), the “notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” As stated above, Plaintiff mailed a copy of the FAC to Samsung on October 20, 2022, and service was not deemed complete until October 30, 2022. Thus, Samsung’s Notice of Removal is timely because it is filed within 30 days of October 30, 2022. *See Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999).

5. Venue lies in the United States District Court for the Central District of California because Plaintiff filed the State Action in this District. *See* 28 U.S.C. § 1441(a) (mandating venue for removed actions).

6. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served on Samsung, which papers include copies of the FAC and summons, are concurrently filed as attachments hereto as **Exhibit A**.

7. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on counsel for Plaintiff, and a copy is being filed with the Clerk of the Superior Court of the State of California for the County of Los Angeles.

III.

**REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER
JURISDICTION UNDER CAFA**

8. The State Action is a civil action over which this Court has original jurisdiction pursuant to CAFA. Under CAFA, federal courts have original jurisdiction over a class action if: (1) it involves 100 or more putative class members; (2) any class member is a citizen of a state different from any defendant; and (3) the aggregated

1 amount in controversy exceeds \$5,000,000, exclusive of interest and costs. *See* 28
 2 U.S.C. § 1332(d). The State Action meets those requirements.

3 9. To remove a case under CAFA, a defendant need only “file in the federal
 4 forum a notice of removal ‘containing a short and plain statement of the grounds for
 5 removal’”—*i.e.*, the same liberal pleading standard required by Federal Rule of Civil
 6 Procedure 8(a), requiring only plausible allegations as to the basis for removal. *Dart*
 7 *Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 87 (2014) (quoting 28 U.S.C. §
 8 1446(a)). Samsung easily meets that standard.

9 10. As set forth below, this is a putative class action in which, as alleged: (1)
 10 there are more than 100 members in Plaintiff’s proposed class; (2) Plaintiff and the
 11 members of the putative class have a different citizenship than Samsung; and (3) the
 12 claims of the proposed class members exceed the sum or value of \$5,000,000 in the
 13 aggregate, exclusive of interests and costs. Accordingly, this Court has subject matter
 14 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

15 A. **The State Action is a “Class Action” Under CAFA**

16 11. CAFA defines a “class action” as “any civil action filed under Rule 23 of
 17 the Federal Rules of Civil Procedure or similar State statute or rule or judicial
 18 procedure authorizing an action to be brought by 1 or more representative persons as a
 19 class action.” 26 U.S.C. § 1332(d)(1)(B).

20 12. Here, the FAC is styled as a “Class Action Complaint” (FAC at 1);
 21 Plaintiff specifically alleges that he is bringing the State Action on behalf of himself
 22 and a putative class comprised of “more than 100 persons” allegedly affected by the
 23 Security Incident; he contends that a class action in this case would be “superior to all
 24 other available methods for the fair and efficient adjudication of the controversy;” and
 25 he seeks an order certifying this action as a class action, designating Plaintiff as the
 26 representative of the class, and appointing Plaintiff’s counsel as counsel for the class.
 27 FAC ¶¶ 5–8, 26, 85, 90. Actions seeking class treatment in this manner are “class
 28 actions” under CAFA. *See Bryant v. NCR Corp.*, 284 F. Supp. 3d 1147, 1150 (S.D.

1 Cal. 2018) (“Here, there is no dispute the present action is a ‘class action’ under
 2 CAFA, as the action contains class allegations under California Code of Civil
 3 Procedure § 382.”).

4 **B. The Putative Class Consists of More than 100 Members**

5 13. Plaintiff seeks to represent a putative class defined as: “All individuals
 6 whose PII was compromised in the data breach announced by Samsung on September
 7 2, 2022, who reside in the State of California.” FAC ¶ 82.

8 14. The putative class consists of more than 100 individuals. Indeed, Plaintiff
 9 alleges that the putative class is comprised of “more than 100 persons” who were
 10 purportedly affected by the Security Incident. *Id.* ¶ 85. Moreover, Plaintiff bases his
 11 claims on a notice Samsung sent to customers potentially impacted by the Security
 12 Incident. *Id.* ¶ 24. Samsung avers that it sent such notices to more than 1,000,000
 13 individuals in the State of California alone. Accordingly, the requirement of 100 or
 14 more class members is met.

15 **C. Minimal Diversity Exists**

16 15. Under CAFA’s “minimal diversity” requirement, a “federal court may
 17 exercise jurisdiction over a class action if ‘any member of a class of plaintiffs is a
 18 citizen of a State different from any defendant.’” *Mississippi ex rel. Hood v. AU*
 19 *Optronics Corp.*, 571 U.S. 161, 165 (2014) (quoting 28 U.S.C. § 1332(d)(2)(A));
 20 *Duran v. Fernandez Bros.*, 2015 WL 7012884, at *3 (N.D. Cal. Nov. 12, 2015).

21 16. Under CAFA, minimal diversity exists if any member of the proposed
 22 class is a citizen of a State other than New York or New Jersey. 28 U.S.C.
 23 § 1332(d)(2)(A), (d)(2)(B); *Hood*, 571 U.S. at 165; *Duran*, 2015 WL 7012884, at *3.
 24 CAFA’s minimal diversity requirement is readily satisfied here.

25 17. Samsung avers that it is a New York corporation that has its principal
 26 place of business in New Jersey. Samsung, therefore, is a citizen of both New York
 27 and New Jersey for diversity purposes. *See Hertz Corp. v. Friend*, 559 U.S. 77, 80–81
 28 (2010); 28 U.S.C. § 1332(c)(1).

1 18. Samsung further avers that Plaintiff is a California citizen, thereby
 2 making him diverse from Samsung. Indeed, Plaintiff claims he “is a citizen of Los
 3 Angeles County in the State of California.” FAC ¶ 4. Accordingly, at least one
 4 member of the proposed class is a citizen of a State other than New York or New
 5 Jersey. Minimal diversity exists.

6 **D. The Amount-in-Controversy Requirement is Satisfied**

7 19. To establish CAFA’s amount-in-controversy requirement, Samsung
 8 “need include only a plausible allegation that the amount in controversy exceeds the
 9 jurisdictional threshold” of \$5 million. *Dart Cherokee*, 574 U.S. at 89.

10 20. Although Samsung denies Plaintiff or any putative class member suffered
 11 any cognizable injury as a result of the Security Incident, Plaintiff asserts causes of
 12 action for, among other things, negligence, breach of implied contract, and unfair
 13 business practices. FAC ¶¶ 93–148. In connection with these causes of action,
 14 Plaintiff seeks damages for “credit monitoring services” and “other protective
 15 measures to deter and detect identity theft” on behalf of a putative class consisting of
 16 “[a]ll individuals” allegedly affected by the Security Incident “who reside in the State
 17 of California.” *Id.* ¶¶ 14, 82. As to himself, Plaintiff specifically alleges that he
 18 “subscribed to a credit monitoring service at the cost of \$20 per month” following the
 19 Security Incident and that it is necessary to maintain such services for years following
 20 such an incident. *Id.* ¶¶ 32, 110. Given Plaintiff claims he is typical of the putative
 21 class, that the annual cost of the credit monitoring service he allegedly purchased
 22 exceeds \$200 annually, and that more than 1,000,000 individuals in the State of
 23 California received notices from Samsung regarding the Security Incident, the amount
 24 in controversy plainly exceeds \$5 million. *Id.* ¶¶ 32, 88.

25 21. Plaintiff also asserts a cause of action under the CCPA and “seek[s]
 26 actual damages and statutory damages of \$750 per customer record” allegedly
 27 affected by the Security Incident. *Id.* ¶ 156. That alone exceeds the jurisdictional
 28 minimum. And that does not even include the other compensatory damages alleged by

1 Plaintiff, including damages stemming from alleged “[o]ut-of-pocket costs associated
2 with the prevention, detection, recovery, and remediation from identity theft or fraud,”
3 “[l]ost opportunity costs and lost wages,” the “present and continued risk to their PII,”
4 and “anxiety, emotional distress, and loss of privacy.” *Id.* ¶¶ 79–81. Nor does it
5 include Plaintiff’s request for an award of attorneys’ fees. *Id.* at 28. By all counts,
6 CAFA’s \$5 million amount-in-controversy requirement is satisfied.

7 **WHEREFORE**, Samsung respectfully removes the State Action to this Court
8 pursuant to 28 U.S.C. § 1441(b).

9
10 Dated: November 3, 2022

HUNTON ANDREWS KURTH LLP

11
12 By: _____ /s/ Jason J. Kim

13 Ann Marie Mortimer
14 Jason J. Kim

15 Attorneys for Defendant
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